



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

December 1, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Grbavac Construction Co., Inc. v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 287 470

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$341,634.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Public Works - Community Improvement District 2658-M.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Department of Public Works.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosures

MEMORANDUM

November 17, 2003

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: WARREN R. WELLEN
Senior Deputy County Counsel
Public Works Division

RE: Grbavac Construction Co., Inc. v. County of Los Angeles
Los Angeles Superior Court Case No. BC 287470

DATE OF
INCIDENT: May 2000 to June 2001

AUTHORITY
REQUESTED: \$341,634

COUNTY
DEPARTMENT: Department of Public Works - Community Improvement District 2658-M

CLAIMS BOARD ACTION:

☐ Approve ☐ Disapprove ☐ Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003.

SUMMARY

This is a recommendation to settle for \$341,634 a lawsuit filed by Grgo & Gordon Grbavac Construction Co., Inc. ("Grbavac"), for breach of contract arising from a County sewer construction project.

LEGAL PRINCIPLE

A public entity is liable for costs incurred by a contractor on a public works construction project due to inaccurate or misleading plans and specifications.

SUMMARY OF FACTS

This case arises from a public works construction project to install approximately 50,000 linear feet of sewers in an unincorporated area near Pasadena ("Project"). The scope of work included excavation, trenching, pipe placement, cover, backfill, compaction, and paving. County Improvement District 2658-M ("County Improvement District") was formed to finance the Project.

The County hired consultants Kriger & Stewart ("Kriger") to design the Project and act as the Project inspector.

The Project was put out for public bid. Kriger drafted the plans and specifications which indicated that the backfill placed above the sewers could be compacted at certain levels using a method called "jetting." Jetting involves introducing pressurized water into the soil so that it will collapse and become compacted. Jetting is less expensive than mechanical compaction, a method which involves using various types of equipment to compact the soil. Jetting also takes less time than mechanical compaction.

A soils report was made available to bidders, but expressly not included in the plans and specifications. The soils report concluded that the soil at the location of the Project was not suitable for the jetting method of compaction.

In reliance on the plans and specifications, Grbavac submitted a bid assuming that it would be able to compact using the jetting method. Grbavac did not obtain a copy of the soils report before bidding.

Grbavac was determined to be the lowest responsible bidder. On March 6, 2000, the County and Grbavac entered into a written contract regarding the Project. The contract price was \$3,085,525, and the contract duration was 220 work days.

In May 2002, Grbavac commenced work. Grbavac attempted to compact using jetting. However, Grbavac was not able to achieve the required levels of compaction. Consequently, Kriger directed Grbavac to stop work on May 25, 2001, and to mechanically compact the portions of the trench completed as of that time. Kriger also directed Grbavac to use mechanical compaction for the remainder of the Project. The County issued a change order allowing Grbavac additional time to complete the Project to account for the time it took to complete the recompaction work.

Grbavac complied with Kriger's directives and used mechanical compaction. Even with the additional time authorized in the change order for the recompaction work, Grbavac was still required to accelerate work and work its crew overtime hours in order to complete the entire Project in a timely fashion.

On June 7, 2001, Grbavac completed work on the Project. There were 34 change orders in total which, among other things, extended the contract end date by 31 work days and 22 non-work days. Grbavac completed the Project prior to the extended completion date.

With change orders, the County Improvement District paid a total of \$3,164,639 to Grbavac. Following completion of the Project, Grbavac demanded an additional \$1,085,277. The majority of this amount arises from claims resulting from using mechanical compaction in lieu of jetting.

On December 20, 2002, Grbavac filed a lawsuit in Los Angeles Superior Court against the County for breach of contract.

DAMAGES

Grbavac seeks consequential damages totaling approximately \$1,085,277, which are broken down as follows:

- \$120,793 for the cost of recompacting the initial part of the Project.
- \$578,547 for the added cost of using mechanical compaction in lieu of jetting for the remainder of the Project.
- \$340,018 for the cost of purchasing and hauling crushed rock used as a bedding in place of material which Grbavac intended to compact using jetting.
- \$39,630 for excessive compaction testing which Grbavac claims became necessary because jetting was attempted initially.
- \$6,289 for correcting sags in the sewers.

In addition, Grbavac also seeks consequential damages of approximately \$1 million for lost profits, loss of competitive business advantage, impaired bonding capacity, and additional bond premiums.

STATUS OF CASE

The proposed settlement was reached during an informal voluntary settlement conference between the parties.

In light of the proposed settlement reached between the parties, the Court vacated the trial date previously set for November 19, 2003.

The County has incurred approximately \$60,000 in-house attorneys' fees and expert witness fees as of the present time. These amounts have been charged to the County Improvement District. The proposed settlement will also be funded by the County Improvement District. The District has adequate funds available to cover these amounts.

EVALUATION

We believe that a jury would likely find that the County is responsible for breaching the contract with Grbavac. The County's consultant prepared plans and specifications, approved by the County, which incorrectly stated jetting could be used instead of mechanical compaction. Grbavac reasonably relied on this information in computing its bid. Although Grbavac did have access to the soils report which stated jetting should not be used, the law allows Grbavac to rely upon the superior information possessed by the County.

An outside construction expert and the Department of Public Works evaluated Grbavac's claimed damages and concluded that they are excessive. Our expert and the Department concluded that the additional cost to Grbavac as a result of having to use mechanical compaction instead of jetting, including the cost of redoing the initial backfill, totals approximately \$360,000. Based on this analysis, we believe that a jury would likely find that Grbavac's claimed damages are excessive and would award damages consistent with this reduced amount.

The Department believes that the County is responsible for only \$2,700 of the costs of the additional compaction tests. The majority of the tests were necessary for valid reasons unrelated to the jetting issue. We believe a jury would likely award this amount.

The Department believes that the claim for the costs of correcting the sagging is without merit. Inspection revealed that the sags were preventing sewage from draining correctly. The Department believes Grbavac caused the sags and is responsible for the cost of repairs. We believe a jury would agree with the Department on this issue.

Our office is evaluating whether it is appropriate to pursue a claim against Kriger for indemnity based on Kriger's conduct with respect to drafting the plans and specifications and inspecting the Project. The proposed settlement does not affect the rights of the County to pursue an indemnity claim against Kriger.

Given the considerable risks and costs associated with a jury trial, we recommend that this case be settled for \$341,634. The Department of Public Works concurs with this recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read "Richard D. Weiss", written over a horizontal line.

RICHARD D. WEISS

Acting Assistant County Counsel

DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

Facility: County Improvement District 2658-M, San Pasqual Street Sewers,
Cash Contract 1990

Name: Grgo & Gordon Grbavac Construction Company, Inc. (Grbavac)
Case No: BC287470

RISK MANAGEMENT ISSUES

	ISSUES
<input checked="" type="checkbox"/> Systems <input type="checkbox"/> Personnel	<p>This is an action to settle a lawsuit filed by Grbavac against the County for breach of contract and negligent misrepresentation in Los Angeles Superior Court, Case Number BC287470.</p> <p>In March 2000, Public Works acting on behalf of the County Improvement District hired Grbavac to install sanitary sewers in the San Pasqual area of the County of Los Angeles pursuant to Cash Contract 1990 – San Pasqual Sanitary Sewers. The contract amount was \$3,085,525.00. The plans and specifications were prepared by a consultant.</p> <p>In May 2000, Grbavac commenced work. Shortly thereafter, Grbavac encountered difficulty in compacting the backfill soil, which considerably increased the scope of work. The County Improvement District has paid \$3,164,639.93 to Grbavac to date for the construction of the sewer line.</p> <p>On August 28, 2001, two months after completing the project, Grbavac presented a claim to the County under the Government Tort Claims Act. Their main contention was that the specifications implied a method of soil compaction that was not possible based on the actual field conditions. The District denied the claims both verbally and in writing several times with the final denial letter dated October 15, 2002. The basis of the denial was that the information about the soil conditions was available to the bidders.</p> <p>On December 20, 2002, Grbavac filed a lawsuit against the County for breach of contract and negligent misrepresentation in Los Angeles Superior Court, Case Number BC287470.</p> <p>The settlement is proposed to resolve this matter and avoid the additional expense of a lawsuit.</p>

INVESTIGATIVE SUMMARY

DATE	INVESTIGATION
September 2002	Public Works' investigation determined that the project specifications did not clearly define the scope of work in regards to the method for compacting the backfill. Contrary to Grbavac's contention, the District did not intentionally misrepresent the scope of work. However, jetting of the backfill was allowed in the specifications, which is contrary to information contained in the soils report.

CORRECTION ACTIONS (PERSONNEL)

PERSONNEL INVOLVED	STATUS OF TIME OF EVENT	CURRENT STATUS	DISCIPLINARY ACTION TAKEN	DATE COMPLETED
Consultant Designer		On-going	County Counsel is currently reviewing whether sufficient evidence is available to file a claim against the design consultant who prepared the specifications pursuant to the errors and omissions clause of their contract.	

CORRECTIVE ACTIONS (SYSTEM)

SYSTEM	CORRECTIVE ACTION	DATE COMPLETED
Ensuring that Specifications clearly advise bidders of known field conditions	The Department's staff responsible for the preparation and reviewing of specifications has been briefed on the issues in this case and will monitor all future specifications to avoid ambiguous language between the specifications and the soils report.	September 2003

CHRONOLOGY OF EVENTS

DATES	EVENTS
March 6, 2000	The County and Grbavac enter into contract for the construction of the San Pasqual Sanitary Sewer Line
June 7, 2001	Contractor completes work of contract
August 28, 2001	Contractor presents the District with the claim
October 15, 2002	District denies claim by Grbavac
December 20, 2002	Grbavac files a lawsuit against the County
January to September 2003	Settlement negotiations between Grbavac and County with tentative settlement agreement reached.